

The seal of the Government of Madhya Pradesh is a circular emblem. It features a central shield divided into four quadrants: top-left with a crescent and star, top-right with a conch shell, bottom-left with a bull, and bottom-right with a lion. The shield is flanked by two elephants. Above the shield is a crown-like element. The entire emblem is encircled by a border containing the text 'UNITE WE STAND DIVIDE WE FALL' at the top and 'सत्यमेव जयते' at the bottom. Below the seal is the year 'MDCCCXX' in Roman numerals.

No. 14-0333 PO

We convened a hearing on September 17, 2014. The Director appeared by Assistant Attorney General Daryl Hylton. Despite having been given notice of the date, time, and place of the hearing, Wood did not appear. The matter became ready for decision on November 4, 2014, the date the last written arguments were due.

Findings of Fact

1. Wood was a licensed peace officer at all relevant times.
2. Between February 17, 2012 and September 14, 2012, Wood worked for St. Louis County, Missouri, as a peace officer.
3. Between those dates, Wood made the misrepresentation to St. Louis County that he worked 15 to 35.5 hours of overtime, as a peace officer, and was entitled to compensation therefor.
4. On December 9, 2013, as a result of the aforementioned misrepresentation, Wood pled guilty to the crime of stealing less than \$500 in violation of § 570.030¹ in the Circuit Court or St. Louis County. Said violation is a Class A misdemeanor, for which Wood was sentenced to two years' supervised probation with conditions, including payment of restitution. The court suspended the imposition of sentence.
5. Wood committed the aforementioned criminal offense.

Conclusions of Law

We have jurisdiction to hear this case.² The Director has the burden of proving that Wood has committed an act for which the law allows discipline.³ The Director argues that there is cause for discipline under § 590.080.1(2) and (3):

1. The director shall have cause to discipline any peace officer licensee who:

* * *

- (2) Has committed any criminal offense, whether or not a criminal charge has been filed;

¹ RSMo Supp. 2009. All further statutory references are to RSMo Supp. 2013 unless otherwise noted.

² Section 590.080.2.

³ *Missouri Real Estate Comm'n v. Berger*, 764 S.W.2d 706, 711 (Mo. App. E.D. 1989).

(3) Has committed any act while on active duty or under color of law that involves moral turpitude or a reckless disregard for the safety of the public or any person[.]

As used in § 590.080.1(2), a “criminal offense” may be “any felony, misdemeanor, or infraction.”⁴ Wood pled guilty to misdemeanor stealing. There is cause to discipline his license under § 590.080.1(2).

Section 590.080.1(3) allows discipline when a peace officer has committed any act while on active duty or under color of law that involves moral turpitude. There is no evidence to make the determination that Wood misrepresented his work hours while he was on active duty.

Furthermore, the evidence fails to provide any link between Wood’s falsification of time records and whether he acted under the color of law in doing so. The phrase “under color of law” is not defined for purposes of § 590.080.1(3), but it is a legal term of art that we must afford its “peculiar and appropriate meaning in law[.]”⁵ To this end, we note that application of the phrase is commonly examined in the context of civil rights cases under 42 U.S.C. § 1983, where it means a state actor exercised power he possessed by virtue of state law and was only able to do so because he had the authority of state law.⁶ A misuse of power possessed under state law is action taken under color of state law, and so includes acts taken under pretense of the law and acts overstepping the authority provided by the law.⁷ The act of falsely submitting time sheets could be performed by any employee in any work environment and is not specific to a peace officer.

⁴Section 556.061(19).

⁵ Section 1.090, RSMo 2000.

⁶ *Dossett v. First State Bank*, 399 F.3d 940, 949 (8th Cir. 2005)(internal citations and quotation omitted).

⁷*Id.*

The Director has not demonstrated that Wood misused his power under color of law when he falsely submitted time records. Thus, we find there is no cause to discipline Wood's license under § 590.080.1(3).

Summary

Wood is subject to discipline under § 590.080.1(2).

SO ORDERED on December 4, 2014.

// *Sreenivasa Rao Dandamudi*

SREENIVASA RAO DANDAMUDI
Commissioner